

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARUS YOUNG,	§	
	§	No. 273, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0102006383
Appellee.	§	

Submitted: July 13, 2009
Decided: October 13, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 13th day of October, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Darus Young, filed this appeal from the Superior Court's April 14, 2009 order denying his motion for correction of an illegal sentence. The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of Young's opening brief that the appeal is without merit.¹ We agree and affirm.

¹ Del. Supr. Ct. R. 25(a).

(2) In December 2001, a Superior Court jury convicted Young of Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance. On February 1, 2002, Young was sentenced to thirty years at Level V suspended after fifteen years mandatory minimum for one year at Level IV work release followed by probation.² On direct appeal, this Court affirmed Young's conviction and sentence.³ Thereafter, this Court affirmed the Superior Court's denial of postconviction relief.⁴

(3) In March 2009, Young filed a motion for correction of an illegal sentence under Superior Court Criminal Rule 35(a) ("Rule 35(a)"). Young claimed that the mandatory minimum portion of his sentence, imposed pursuant to title 16, section 4763(a)(3), is subject to the application of good time credit.⁵ By order dated April 14, 2009, the Superior Court denied Young's motion as without merit. This appeal followed.

(4) After careful consideration of the parties' positions on appeal and the Superior Court record, we have concluded that the denial of Young's sentence correction motion should be affirmed. First, Young's claim in essence relates to the Department of Correction's method of applying good

² Young was also convicted of Conspiracy in the Second Degree and Possession of Drug Paraphernalia. He received a one year suspended sentence for each of those offenses.

³ *Young v. State*, 2002 WL 31780198 (Del. Supr.).

⁴ *Young v. State*, 2005 WL 2679249 (Del. Supr.).

⁵ See Del. Code Ann. tit. 16, § 4763(a)(3) (2001) (providing for fifteen-year mandatory minimum term of imprisonment).

time credits to his sentence. We have held that a writ of mandamus filed in the Superior Court is the proper procedural vehicle when a prisoner seeks to challenge the Department of Correction's calculation or application of good time credit to a sentence.⁶

(5) Second, Young is not entitled to relief under Rule 35(a). Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily authorized limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to substance, or is a sentence that the judgment of conviction did not authorize.⁷ In this case, Young has not demonstrated, and the record does not reflect, that he is serving an illegal sentence.

(6) Third, in Delaware, good time is an administrative device that provides for an inmate's early release from a term of imprisonment.⁸ Good time credits "serve to reduce a non-mandatory portion of the term of incarceration."⁹ Although good time credits can be earned while serving a

⁶ *Andrews v. State*, 2007 WL 1599754 (Del. Supr.); *Pasquale v. State*, 2007 WL 2949140 (Del. Supr.); *Cochran v. State*, 2007 WL 2812870 (Del. Supr.); *Ortiz v. State*, 2007 WL 1885122 (Del. Supr.); *Ortiz v. State*, 2007 WL 1732729 (Del. Supr.).

⁷ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁸ *Serpa v. State*, 2009 WL 2942882 (Del. Supr.) (citing *Snyder v. Andrews*, 708 A.2d 237, 242 (Del. 1998)).

⁹ *Watson v. Burgan*, 610 A.2d 1364, 1367 (Del. 1992).

minimum mandatory sentence, those good time credits can only be applied to reduce a non-mandatory sentence.¹⁰

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁰ *Id.*